

MINUTES

COMMITTEE OF THE WHOLE

December 11, 2013

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Jay Furfaro, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, December 11, 2013, at 5:49 p.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Excused: Honorable Mel Rapozo
Honorable Ross Kagawa (*excused at 5:54 p.m.*)

Minutes of the August 20, 2013 Special Committee of the Whole Meeting.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Chock, and carried by a vote of 5:0:2 (Councilmember Rapozo and Councilmember Kagawa were excused), the Minutes of the August 20, 2013 Committee of the Whole Meeting was approved.

Minutes of the November 13, 2013 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Chock, and carried by a vote of 5:0:2 (Councilmember Rapozo and Councilmember Kagawa were excused), the Minutes of the November 13, 2013 Committee of the Whole Meeting was approved.

The Committee proceeded on its agenda item, as shown in the following Committee Report which is incorporated herein by reference:

CR-COW 2013-20: on Resolution No. 2013-72 RESOLUTION TO IMPLEMENT AN ENVIRONMENTAL AND PUBLIC HEALTH IMPACTS STUDY (EPHIS), VIA FORMATION OF A PESTICIDE AND GENETIC ENGINEERING JOINT FACT FINDING GROUP (JFFG) [Approved as Amended]

There being no objections, the Committee recessed at 7:24 p.m.

The Committee reconvened at 7:27 p.m., and proceeded as follows:

Bill No. 2497

A BILL FOR AN ORDINANCE TO AMEND THE KAUAI COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW ARTICLE TO CHAPTER 4, RELATING TO THE REGISTRATION AND REGULATION OF LOBBYISTS [This item was Deferred.]

Mr. Bynum moved to approve Bill No. 2497, seconded by Ms. Yukimura.

Mr Hooser moved to amend Bill No. 2497 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment A, seconded by Ms. Yukimura.

Chair Furfaro: Mr. Hooser, you have the floor.

Mr. Hooser: There is one (1) main amendment and then there is another one. The first one has the regulation on the cover.

Ms. Yukimura: We only got that one.

Mr. Hooser: Maybe staff has consolidated them all into one. Let me walk through it.

Chair Furfaro: Let me see if we can get clarity. Were the amendments consolidated into one?

PETER MORIMOTO: Yes.

Chair Furfaro: Okay.

Mr. Hooser: You put the second one in it too?

Mr. Morimoto: Yes.

Mr. Hooser: Okay, good. These amendments come from a combination of suggestions from Common Cause, a public interest organization dealing with good government issues, discussions I had with staff, and my own research. I will walk through them, if I may. Many of them are housekeeping. On the first page, change registration and restriction to registration and regulation of lobbyist. Second page, we changed the word individual to person. Persons defined as basically everybody. Persons defined in number ten (10) on that same page. Appropriations, individual, so the work person is all inclusive. Item number nine (9) on that same page, includes the preparation as part of the definition. Lobbying activity is also preparing to lobby, doing the research as well as the actual lobbying itself. The next on down we specify it is five (5) business days. We specify that it is a business mailing address. Next page, page three (3), this is one would argue a substantive amendment on "C," it says prior to testifying before the County Council or administrative agency, a lobbyist shall disclose his or her status as a lobbyist and I am testifying on behalf of "X company," they would say "I am a registered lobbyist and I am testifying on behalf of "X company." So it differentiates employees or just friends of the company from actual lobbyist. Business days, is just a clarification. Moving down the page are mostly housekeeping. Administrative agency was included on the bottom.

Moving to page four (4), this is a substantive amendment. We have non-profit organizations come in and request grants, for example and we fund non-profits and most of them are 501C3 non-profits. According to definition of lobbying, they would be lobbying but if they register as a lobbyist, they risk violating their federal tax status. So this basically says that if you are coming in a 501C3 asking for a grant, you do not have to register as a lobbyist but you still have to disclose the expenditures that you are using but you just do not have to say that "I am a lobbyist." Legally, it gives them an opportunity to come in and talk about it. That is if they are looking for a grant. If they are here to influence legislation, I

mean some of the largest non-profits in the world are heavy lobbying. So if they are here to influence legislation and they lobby, they have to register as a lobbyist.

But if they are here just for their grant to fund "whatever organization" then they do not have to register. Moving down, number two (2) in the middle of the page, 4-5.5 number two (2) just includes the disclosure items to include but are not limited to print, electronic, broadcast or other media. Just to make it clear that is a part of the expense of lobbying, it has to be disclosed. Down at the bottom of the page, we deleted this section where it starts at number one (1) and then it replaces it with one (1), two (2), three (3) four (4) which you can see it is all underlined. Basically just restating what was stated before but making it a little clearer. It was sort of difficult to understand the language but this is an itemization of the items that have to be disclosed which include both the expenditures as well as the income from lobbyist.

Number five (5), the subject area of the legislative and administrative action has to be disclosed but instead of just saying "I lobbied on smoking," they would have to say "I lobbied on Bill No. so and so limiting smoking in public areas" or something like that so that there is more definition. On "D" that is a substantive change. This is actually kind of interesting because it says "the receipt of money intended for the influence of election or defeat of the candidate." So if a lobbyist spends money to influence an election, they have to disclose that under this. The existing version had that excluded. I do not know why but it was excluded and this tightens that up and requires it to be included, specifically included. The manner of filing records is housekeeping. We will flip to page six (6). Requires it to be posted to the website within ten (10) days, which I think is a really good thing and then it adds in "B," "no person shall serve on any County advisory committee or task force while engaging in any lobbying or lobbying activities related to the matter being discussed." I believe that is the substance the amendment. There is one (1) other that I did not talk about but it is in here. The original language had excluded travel costs and this language includes travel cost. If you are a lobbyist and you are flying someone from the mainland it may be a couple thousand dollars in travel cost and they volunteer their services and so this does not exclude travel cost. This includes travel costs. We just deleted. It is a deletion that is why it is not highlighted in yellow. It is a deletion that is not highlighted in yellow because we did not add anything. This should be highlighted in yellow. It says at the end of the sentence, "provided that any amounts expended for travel costs shall not be included," that has been deleted. Now we are including travel costs. I compliment County staff, Peter and Yvette, particularly with Common Cause. We had some good discussions and made significant improvements. We had some good discussions. I think it is a really, really significant improvement. I believe the core of this was taken off the State existing and so we have improved upon that, I believe, so I highly recommend a vote in support and I will open questions.

Chair Furfaro: I have a question for the County Attorney when we get a moment but, Mr. Bynum you have the floor.

Mr. Bynum: I will try to be brief. I am in full support of this Bill. I am particularly happy about the amendment about travel. We are in Hawai'i and when I ran a business I got a lot of people to come here and do stuff for traveling so this is a good move. Thank you.

Chair Furfaro: Mr. Hooser or JoAnn, do you mind if I ask the County Attorney to come up? Al, will you come up for a second?

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Council Chair,
Councilmembers, good evening, Al Castillo, County Attorney.

Chair Furfaro: Al, I made a visit when we had first drafted this. I went to speak to the Ethics Commission. Do we have a clearer understanding of who will be keeping the bonified list of registered lobbyist in our County? Is it your office? Is it the Board of Ethics? How does that happen?

Mr. Castillo: It is my understanding that the Boards and Commissions and I do not know if the Board of Ethics themselves.

Chair Furfaro: Gary, did you have a.....

Mr. Hooser: The Bill says the Board of Ethics. There is one (1) other amendment that I did not mention but it says it takes effect upon ninety (90) days. So that gives time.

Chair Furfaro: Those two (2) things came out of the first amendment that I sent you when I spoke to them. I went to the Board of Ethics. They asked for the ninety (90) days but they were not clear that it was their *kuleana* to keep that list. I just wanted to make sure now we are saying "ninety (90) days, and Board of Ethics." Can we make sure we convey that to them, should this pass the full Council?

Mr. Castillo: I am not privy to what occurred in the Board of Ethics. I am sorry.

Chair Furfaro: Paula was present.

Mr. Castillo: Yes, I know she was but I know for a fact that she always keeps track.

Chair Furfaro: I will do a follow-up.

Mr. Castillo: In will follow-up with our attorney at the Board of Ethics.

Chair Furfaro: It is coming out of the Committee of the Whole. It originally was something Mr. Hooser and I talked about. I have been to the Ethics Committee to make those clarities and that is the feedback I got. We have some good amendments here. I just want to make sure that when we are saying to these bonified lobbyist, we know there is a list being maintained through Boards and Commissions and the Board of Ethics Commission understands their responsibility.

Mr. Castillo: I will pass on the message.

Chair Furfaro: Thank you.

Mr. Castillo: Thank you.

Chair Furfaro: Thank you, JoAnn, for giving me an opportunity in front of you. You have the floor.

Ms. Yukimura: Question Councilmember Hooser. On page two (2), I just wanted to understand the implications of adding in "preparing to

communicate and preparing to solicit." I just have not really dealt with these issues, so I am just learning here.

Mr. Hooser: And I also. Those suggestions, and Peter can correct me if I am wrong, came out from the Common Cause. It is my understanding that it means not just showing up because it is allocated on how much money you spend and how much time, so the definition of being a lobbyist spending "x" number of hours and "x" amount of money and so it is not just showing up in front of us for five (5) minutes but it is the time you spend preparing to show up for us and preparing to solicit us and the money you spend preparing that kind of thing. This is the intent.

Ms. Yukimura: If there is no urgency in passing this, could we take one (1) more Committee meeting to look at it and fully understand it and also have the public have an opportunity to give input in Committee?

Chair Furfaro: Sure. I have no problem with that. Paula did indicate it to me that she would be available to comment when we moved it into full Council or if we kept it in Committee either way.

Ms. Yukimura: I know she was here earlier.

Chair Furfaro: She has been here all day waiting for certain parts but I have no problem with carrying it over one (1) more time.

Ms. Yukimura: I really appreciate the proposed amendments and the intention to make it more effective in terms of its purpose. I am not questioning the basic thrust of the amendments but it is fairly detailed and I just wanted to be able to understand each provision or each proposed change and just understand the implications like Councilmember Hooser just explained to me which makes a lot of sense on the definition of lobbying or lobbying activities and things like that. I the interest of time....

Chair Furfaro: I have no problem with that as the introducer of the original Bill. I have shared my comments with the Board of Ethics and with Mr. Hooser. These are Mr. Hooser's amendments, after that feedback, I think we can go one (1) more time.

Ms. Yukimura: If it is alright...

Mr. Hooser: If I may, my goal, our goal, I think is to have a opportunity to have a model piece of legislation and set an example for other places and so I am perfectly open and accept taking the time and needs to encourage all of the members to look at it.

Chair Furfaro: And I think that there are two (2) or three (3) other members in the public that do want to give testimony but have left already for the day. We need to defer this to a date specific in January.

Ms. Yukimura: Or the next Committee meeting?

Chair Furfaro: Next Committee meeting is next year. I do not have the date.

Ms. Yukimura: January 8th the staff is telling me.

Chair Furfaro: That is why I said date specific.

Ms. Yukimura:
motion.

If there is no more discussion, I will make a

Chair Furfaro:

JoAnn is making a motion to defer.

Upon motion duly made by Councilmember Yukimura, seconded by Councilmember Chock, and carried by a vote of 5:0:2 (Councilmember Kagawa and Councilmember Rapozo were excused), Bill No. 2497 was deferred.

CR-COW 2013-21: on Bill No. 2510

**A BILL FOR AN ORDINANCE
APPROVING A COLLECTIVE
BARGAINING AGREEMENT FOR
BARGAINING UNIT 13 BETWEEN
JULY 1, 2013 AND JUNE 30, 2017
[Approved.]**

There being no further business, the meeting was adjourned at 7:52 p.m.

Respectfully submitted,

Lori L. Marugame
Council Services Assistant I

APPROVED at the Committee Meeting held on January 22, 2014:

JAY FURFARO
Chair, COW



(December 11, 2013)

FLOOR AMENDMENT

Bill No. 2497, Relating to the Registration and Regulation of Lobbyists

Introduced by: GARY L. HOOSER

1. Amend Bill No. 2497, by amending the title and Section 4-5.1 in Section 2 to read as follows:

"ARTICLE 5. REGISTRATION AND [RESTRICTION] REGULATION OF LOBBYISTS

Sec. 4-5.1 Declaration of Intent.

The County Council hereby declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to appropriate officials their opinions on legislation and governmental operations; and that, to preserve and maintain the integrity of the governmental decision-making process in this county, it is necessary that the identity, expenditures and activities of persons and organizations retained, employed or designated to influence the passage or defeat of any legislation by county council, the approval, or veto, of any legislation by the mayor and attempts to influence administrative action by the executive branch, be publicly and regularly disclosed."

2. Amend Bill No. 2497, by amending Section 4-5.2 in Section 2 to read as follows:

"Sec. 4-5.2 Definitions. When used in this Article, the following words or phrases shall have the meaning given in this section unless it shall be apparent from the context that another meaning is intended.

(1) "Administrative action" means the proposal, drafting, consideration, amendment, enactment, or defeat by any administrative agency of any rule, regulation, or other action governed by Hawai'i Revised Statutes (HRS) Section 91-3.

(2) "Administrative agency" means a commission, board, agency, or other body, or official in the County government that is not a part of the legislative branch.

(3) "Board of Ethics" means that board established by Section 20.05 of the Charter of the County of Kaua'i.

(4) "Contested case" shall have the meaning defined in HRS Section 91-1.

(5) "Contribution" includes a gift, subscription, forgiveness of a loan, advance, or deposit of money, or anything of value and includes a contract, promise, or agreement, whether or not enforceable, to make a contribution.

(6) "Expenditure" includes a payment, distribution, forgiveness of a loan, advance, deposit, or gift of money, or anything of value and includes a contract, promise, or agreement, whether or not enforceable, to make an expenditure. "Expenditure" also includes compensation or other consideration paid to a lobbyist for the performance of lobbying services. "Expenditure" excludes the expenses of preparing written testimony and exhibits for a hearing before the County Council or an administrative agency.

(7) "Legislative action" means the sponsorship, drafting, introduction, consideration, modification, enactment, or defeat of any bill, resolution, ordinance, amendment, report, nomination, appointment, or any other matter pending or proposed in the County Council, including the approval or veto of such .

(8) "Lobbyist" means any individual person, who for pay engages, or is engaged, in lobbying or lobbying activities in excess of five (5) hours in any month or spends more than seven hundred fifty dollars (\$750) in any reporting period described in Section [3-1.5-5] 4-5.5 except such persons as specifically excluded by Section [3-1.5-3 (e)] 4-5.3 (f) from the application of this Article. A person who accepts membership dues or contributions made, or a fee or salary paid, with the understanding that the person accepting the same intends to devote a portion of the funds contributed or the time for which the salary is paid to lobbying activities shall be deemed to be "engaged" to conduct such activities.

(9) The term "lobbying" or "lobbying activities" shall mean preparing to communicate or communicating, directly or through an agent, or preparing to solicit or soliciting others to communicate, with a County officer or employee for the purpose of attempting to influence any Legislative action or Administrative action.

(10) "Person" means a corporation, individual, union, association, firm, sole proprietorship, partnership, committee, club, limited liability company or any other organization or a representative of a group of persons acting in concert."

3. Amend Bill No. 2497, by amending Section 4-5.3 in Section 2 to read as follows:

"Sec. 4-5.3 Registration of lobbyists, requirements.

(a) Every lobbyist shall file a registration form with the Board of Ethics within five (5) business days of becoming a lobbyist.

(b) The registration form shall require the lobbyist or appropriate officer of lobbyist if a corporation or appropriate manager or member if the lobbyist is a limited liability company, to provide and certify under oath as true and correct the following information:

(1) The name, business mailing address, and business telephone number of the lobbyist.

(2) The name and principal place of business of each person by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears or works and a written authorization to act as a lobbyist from each person by whom the lobbyist is employed or with whom the lobbyist contracts.

(3) The subject areas on which the lobbyist expects to lobby.

(c) Prior to testifying before the County Council or administrative agency, a lobbyist shall disclose his or her status as a lobbyist and the person on whose behalf the lobbyist is appearing.

(d) A lobbyist shall report any change in any of the information contained in the registration statement within ten (10) business days after the change has occurred.

(e) A lobbyist shall file a notice of termination within ten (10) business days after the lobbyist ceases the activity which required the lobbyist's registration. The lobbyist and the employer of the lobbyist shall remain subject, however, to the requirements of Chapter 97 for the period during which the registration was effective.

(f) This Article shall not apply to:

(1) Any individual who represents oneself and not any other person before the County Council or administrative agency; provided that such individual must nonetheless file a statement of expenditures if the individual meets any of the provisions of Section [3-1.5-5(a)(2)-(3)] 4-5.5(a)(2) or (3);

(2) Any federal, state, or county official or employee acting in the official's or employee's official capacity;

(3) Any newspaper or other regularly published periodical or radio or television station (including any individual who owns, publishes, or is employed by a newspaper or periodical or radio or television station) while publishing in the regular course of business news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislative or administrative action;

(4) Any attorney who advises the attorney's clients on the construction or effect of proposed legislative or administrative action; provided that such attorney must nonetheless file a statement if the attorney meets the reporting statement requirements set forth in Section [3-1.5-5(a)(2) or (3)] 4-5.5(a)(2) or (3); [and]

(5) Any person who possesses special skills and knowledge relevant to certain areas of legislation, whose skills and knowledge may be helpful to the County Council, administrative agency and executive branch of County government, and who makes an occasional appearance at the request of the County Council or an administrative agency, even though receiving reimbursement or other payment from the County Council or administrative agency for the appearance~~].; and~~

(6) Employees of non-profit organizations exempt from paying federal income tax under Section 501(c)(3) of the Internal Revenue Code seeking direct funding from the County of Kaua'i shall not be required to register as a lobbyist, but shall be required to comply with Sections 4-5.5 and 4-5.6 of this Article."

4. Amend Bill No. 2497, by amending Section 4-5.4 in Section 2 to read as follows:

"Sec. 4-5.4 Renewal of registration.

Each registered lobbyist shall renew the lobbyist's registration biennially by filing a registration and authorization form with the Board of Ethics by January 31, [2013] 2015 and on every odd-numbered year's session thereafter."

5. Amend Bill No. 2497, by amending Section 4-5.5 in Section 2 to read as follows:

"Sec. 4-5.5 Contributions and expenditures; statement.

(a) The following persons shall file a statement of expenditures with the Board of Ethics on July 31 and January 31 of each year:

(1) Each lobbyist.

(2) Each person who spends seven hundred fifty dollars (\$750) or more of the person's or any other person's money, including, but not limited to, amounts spent on print, electronic, broadcast or other media in any six-month period for the purpose of attempting to influence legislative or administrative action or a ballot issue by communicating or urging others to communicate with public officials[; provided that any amounts expended for travel costs, including incidental meals and lodging, shall not be included in the tallying of the seven hundred fifty dollars (\$750)].

(3) Each person who employs or contracts for the services of one (1) or more lobbyists, whether independently or jointly with other persons. If the person is an industry, trade, or professional association, only the association is the employer of the lobbyist.

(b) The July 31 report shall cover the period from January 1 through the last day of June. The January 31 report shall cover the period from July 1 through December 31 of the previous year.

(c) The statement shall contain the following information:

[(1)] The name and address of each person with respect to whom expenditures for the purpose of lobbying in the total sum of twenty-five dollars (\$25) or more per day was made by the person filing the statement during the statement period and the amount or value of such expenditure;

(2) The name and address of each person with respect to whom expenditures for the purpose of lobbying in the aggregate of one hundred fifty dollars (\$150) or more was made by the person filing the statement during

the statement period and the amount or value of such expenditures;

(3) The total sum or value of all expenditures for the purpose of lobbying made by the person filing the statement during the statement period in excess of seven hundred fifty dollars (\$750) during the statement period;

(4) The name and address of each person making contributions to the person filing the statement for the purpose of lobbying in the total sum of twenty-five dollars (\$25) or more during the statement period and the amount or value of such contributions; and]

(1) The name and address of any person receiving lobbying expenditures from the person filing the statement in the amount of \$25.00 or more per day and the amount or value of such expenditure;

(2) The name and address of any person receiving lobbying expenditures from the person filing the statement in the aggregate amount of \$150.00 or more per statement period and the amount or value of such expenditures;

(3) If the lobbying expenditures made during the statement period exceed \$750.00, the total sum or value of all such expenditures and an itemized list containing a general description of all expenditures;

(4) The name and address of each person who, during the statement period and for the purpose of lobbying, contributed \$25.00 or more to the person filing the statement; and

(5) The subject area of the legislative and administrative action and the title of the bill, resolution, permit, or action which was supported or opposed by the person filing the statement during the statement period.

(d) The receipt or expenditure of any money for the purpose of influencing the election or defeat of any candidate for an elective office or for the passage or defeat of any proposed measure at any special or general election is [excluded from] included in the reporting requirement of this section."

6. Amend Bill No. 2497, by amending Section 4-5.6 in Section 2 to read as follows:

"Sec. 4-5.6 Manner of filing; public records.

All statements required by this Article to be filed with the Board of Ethics:

(1) Shall be deemed properly filed when delivered or deposited in an established post office within the prescribed time, duly stamped, registered, or certified, and directed to the Board of Ethics; provided, however, in the event it is not received, a duplicate of the statement shall be promptly filed upon notice by the Board of Ethics of its nonreceipt; [and]

(2) Shall be preserved by the Office of Boards and Commissions for a period of four (4) years from the date of filing; and shall constitute part of the public records of the Office of Boards and Commissions[.] and

(3) Shall be posted on a website maintained by the Office of Boards and Commission within ten (10) business days of receipt by the Board of Ethics.

7. Amend Bill No. 2497, by amending Section 4-5.7 in Section 2 to read as follows:

"Sec. 4-5.7 Restricted activities.

(a) No lobbyist shall accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.

(b) No person shall serve on any County advisory committee or task force while engaging in any lobbying or lobbying activities related to the matter being discussed, studied, analyzed or evaluated by such committee or task force.

8. Amend Bill No. 2497, by amending Section 4-5.8 in Section 2 to read as follows:

"Sec. 4-5.8 Administration.

(a) The Board of Ethics shall administer and implement this Article, and shall have the following powers and duties:

(1) Initiate, receive, [and] consider and respond to charges concerning alleged violations of this Article, and investigate or cause to be investigated on a confidential basis, the activities of any person to determine whether the person is in compliance with this Article;

(2) Prescribe forms for the statements and reports required by Sections [3-1.5-4 and 3-1.5-5] 4-5.4 and 4-5.5, and establish orderly procedures for implementing the requirements of those provisions;

(3) Render advisory opinions upon the request of any person subject to this Article. If no advisory opinion is rendered within forty-five (45) days after the request is filed with the Board of Ethics, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of this Article. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the Board of Ethics in any subsequent charges concerning the person subject to this Article who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for an advisory opinion;

(4) Issue subpoenas, administer oaths, and exercise those powers conferred upon the Board of Ethics by Section 20.05(E) of the Charter of the County of Kaua'i;

(5) Adopt rules, not inconsistent with this Article, as in the judgment of the Board of Ethics seem appropriate for the carrying out of this Article and for the efficient administration of this Article, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as

prescribed by, the Board of Ethics. The rules, when adopted as provided in Chapter 91, HRS shall have the force and effect of law; and

(6) Have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this Article in all proceedings commenced within three years of an alleged violation of this Article. A proceeding shall be deemed commenced by the filing of a charge with the Board of Ethics or by the signing of a charge by three or more members of the Board of Ethics. Nothing shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of this Article; and

(7) Report suspected violations of law to the appropriate law enforcement authorities.

(b) Charges concerning the violation of this Article shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the Board of Ethics shall be signed by three (3) or more members of the Board of Ethics. The Board of Ethics shall notify in writing every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the Article. The Board of Ethics may investigate such charges and render an informal advisory opinion to the alleged violator. The Board of Ethics shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the Board of Ethics determine that there is probable cause for belief that a violation of this Article might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be completed successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The Board of Ethics shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four (4) successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty (20) days after service thereof to respond in writing to the charge and statement.

(c) If after twenty (20) days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the Board of Ethics conclude that there is probable cause to believe that a violation of this Article has been committed, then the Board of Ethics shall set a time and place for a hearing, giving notice to the complainant and the alleged violator in the same manner as provided in subsection (b). Upon the Board of Ethics' issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public record. The hearing shall be held within ninety (90) days of the Board of Ethics' issuance of a

notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period.

All parties shall have an opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel; and
- (4) Have the right of cross-examination.

All hearings shall be in accordance with Chapter 91, HRS. All witnesses shall testify under oath and the hearings shall be open to the public. The Board of Ethics shall not be bound by the strict rules of evidence but the Board of Ethics' findings shall be based on competent and substantial evidence.

All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of the record shall be available only to the complainant and the alleged violator at their own expense. All fees collected under this Article shall be deposited into the general fund.

(d) A decision of the Board of Ethics pertaining to the conduct of any person subject to this Article shall be in writing and signed by three or more of the members of the Board of Ethics. A decision of the Board of Ethics rendered after a hearing together with findings and the record of the proceeding shall be a public record.

(e) A person who files a frivolous charge with the Board of Ethics against any person covered by this Article shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys' fees. In any case where the Board of Ethics does not issue a decision or final conclusion in which the Board of Ethics concludes that a person has violated this Article, the Board of Ethics shall, upon the written request of the person charged and after a contested case hearing, make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in Board of Ethics contested case proceedings within one (1) year after the Board of Ethics renders a decision that the charge was frivolous. The Board of Ethics' decision shall be binding upon the court for purposes of a finding pursuant to HRS Section 607-14.5."

9. Amend Bill No. 2497, by amending Section 4-5.9 in Section 2 to read as follows:

"Sec. 4-5.9 Penalties; administrative fines.

(a) Any person who:

- (1) [Willfully fails] Fails to file any statement or report required by

this Article;

(2) ~~[Willfully files]~~ Files a statement or report containing false information or material omission of any fact;

(3) Engages in activities prohibited by Section ~~[3-1.5-7]~~ 4-5.7; or

(4) Fails to provide information required by Sections ~~[3-1.5-3, 3-1.5-4 or 3-1.5-5]~~ 4-5.3, 4-5.4 or 4-5.5;

shall be subject to an administrative fine imposed by the Board of Ethics that shall not exceed five hundred dollars (\$500) for each violation of this Article. All fines collected under this section shall be deposited into the general fund. The Board of Ethics may suspend or revoke the certificate of registration of a lobbyist who has been found to have violated any provision of this Article. The suspension or revocation shall not exceed two (2) years from the date of the sanctions imposition.

(b) No fine, suspension or revocation shall be assessed unless:

(1) The Board of Ethics convenes a hearing in accordance with Section 3-1.5-8(c) and Chapter 91, HRS; and

(2) A decision has been rendered by the Board of Ethics.”

10. Amend Bill No. 2497, by amending Section 5 to read as follows:

“SECTION 5. This ordinance shall take effect ~~[upon]~~ ninety (90) days after its approval.”

(Material to be deleted is bracketed. New material is underscored.)
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